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A

BRIEF STATEMENT

OF THE

BRADFORD CHURCH-RATE CASE.

PUBLISHED AT THE REQUEST OF SEVERAL OF
THE PARISHIONERS.

50

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FRANCIS & JOHN RIVINGTON,
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ADVERTISEMENT.

SOME friends of the Church, who feel that a debt, not only of gratitude, but of honour, is due to Messrs. Popplewell and Pollard, have prevailed on them to allow the publication of this Statement.

The letters subjoined from the various Ecclesiastical Authorities fully express the opinion entertained as to the valuable services rendered by this important case to the Church at large ; and the result of this appeal to the generosity and high principles of Churchmen, will no doubt be the prompt liquidation of the expences incurred by the Wardens in the vindication of the law and the discharge of their own duty.

Donations will be received by Messrs. Glyn and Co., Bankers, Lombard Street ; and by Messrs. Beckett and Co., Bankers, Leeds ; to the credit of Edmund Denison, Esq., M.P., Treasurer.

Statement of Messrs. Benjamin Briggs Popplewell and George Pollard, late Churchwardens of the Township of Bradford, in the Parish of Bradford, in the County of York, concerning the Church-Rate laid by them and a minority of the Parishioners in Vestry assembled on the 14th day of May, 1841.

THE Parish of Bradford is very large and populous: it contains not less than 105,254 Inhabitants, and consists of 13 Townships; and it has of late years been conspicuous for the increase in Church accommodation, which has been afforded to it by public and private charity. Since the year 1834, however, the Dissenters in Bradford, who are a very numerous and influential body, have offered every opposition to the making and laying of a rate for the repair of the parish church, and for the expences incident to the celebration of Divine Service therein.

In the year 1835, Mr. Popplewell and Mr. John Pratt were chosen Churchwardens of the township of Bradford, and they continued in office until the year 1840, when Mr. Pollard was elected Churchwarden in the place of Mr. Pratt.

In the year 1835, Mr. Popplewell and Mr. Pratt convened a vestry meeting, for the purpose of making a Church-rate, but they were unable to obtain a rate in consequence of a motion being made and carried by the opponents of Church-rates, to adjourn the meeting for twelve months; and in the year 1836, they again attempted to make a rate, but they were defeated in the same manner.

It then became evident that no Church-rate could ever be

obtained for the parish church of Bradford upon the votes of a majority of the inhabitants. In the year 1837, therefore, no attempt was made to obtain a rate, and Messrs. Popplewell and Pratt expended out of their own pockets considerable sums of money for the expences incident to the celebration of Divine Service in the parish church. In the year 1838, the fabric of the church became much in want of repair, and a considerable portion of the wall of the churchyard was so dilapidated, as to be in danger of falling. For these reasons, Messrs. Popplewell and Pratt, in 1838, again attempted to obtain a Church-rate, but they were met and defeated by a motion on the part of the Dissenters for an adjournment for twelve months. They then determined to make, and, if possible, to levy, a rate on their own authority. They accordingly called a vestry meeting, and made and laid a rate of their own authority, but before enforcing it, they consulted Dr. Addams, an eminent civilian, on the subject. The opinion of Dr. Addams was, that inasmuch as the power of Churchwardens to make and collect a rate of their own authority was the very question then depending in the Court of Queen's Bench, in the case of the Braintree Church-rate, he should advise the Churchwardens of Bradford to await patiently the result of that case.

Messrs. Popplewell and Pratt, acting upon the advice of Dr. Addams, did not proceed to enforce the rate so made by them on their own authority, but paid, as they had done in previous years, the necessary expences incident to the decent celebration of Divine Service in the parish church for the then current year, which expences were afterwards partly reimbursed by a subscription from some of the parishioners. In November, 1839, Messrs. Popplewell and Pratt endeavoured to get a Church-rate for the year 1840, but a motion for an adjournment was again made by the Dissenters, which the chairman refused to put to the meeting, and the original motion for a rate was rejected, when a poll being demanded by Mr. Popplewell, out of 4288 persons who voted, there was a majority of 2168

against the rate. The Churchwardens then made a rate on their own authority ; but as the judgment of the Queen's Bench had then been given in the Braintree case adverse to a rate not made by a majority, they did not attempt to enforce it. As Messrs. Popplewell and Pratt were, therefore, under these circumstances, unable to get a rate, they were obliged to pay the necessary expences incident to the celebration of Divine Service in the parish church out of their own moneys, and were, and are now, considerably out of pocket on account thereof. In April, 1840, Mr. Pratt ceased to hold the office of Churchwarden, and Mr. Pollard was elected in his stead. In June, 1840, Dr. Musgrave, the Archdeacon of Craven, within whose archdeaconry the parish of Bradford is situated, delivered a charge to the Clergy and Churchwardens of his archdeaconry, in which he said that, notwithstanding the then holding of the judges of the Court of Queen's Bench, that Churchwardens could not make a rate of their own authority, there were two modes by which refractory parishioners might be compelled to meet in vestry and make a rate—the one being by articles exhibited against any refractory parishioners—a mode analogous to an indictment at common law, in the absence of any statutory sanction for enforcing what is enjoined or restraining what is forbidden ; the other mode being by a monition to the Churchwardens and parishioners, disobedience to which would be a contempt of court and punishable by imprisonment.

The present Bishop of Oxford, when archdeacon of Surrey, delivered a charge at a Visitation held in the same year, in which he addressed the clergy of his archdeaconry to the like effect.

As the dilapidated state of the church, and wall of the churchyard, rendered it of the utmost importance to obtain a rate for the parish church of Bradford, Messrs. Popplewell and Pollard, in 1841, called another meeting for that purpose, determining if the majority again refused to make a rate, to act upon Dr. Musgrave's suggestion. At the meeting in 1841, the Churchwardens proposed to raise a sum of 383*. 4s. 2d.*

one item of which was 118*l.* 3*s.* 6*d.* for the necessary expenditure for rebuilding the churchyard wall. The rate was again opposed, and a motion for an adjournment for twelve months was made, which the chairman again refused to put to the meeting, and the original motion for a rate was again rejected by a very large majority. About this time an argument on the Braintree Church-rate case came on before the twelve judges in the Court of Exchequer Chamber, into which the previous judgment of the Court of Queen's Bench in that case had been brought by writ of error. The late Lord Chief Justice Tindal, on behalf of all the judges, delivered judgment on the writ of error; and although on some technical grounds the Braintree rate was held bad, and the judgment of the Court of Queen's Bench affirmed, the Lord Chief Justice gave utterance to an opinion, that parishioners refusing to make a rate at a meeting legally called for that purpose, threw away their votes, and that if the Churchwardens and a minority of the inhabitants fulfilled the object of the meeting, and voted for a Church-rate, such rate was in effect a legal and valid rate, and might therefore be enforced. Messrs. Popplewell and Pollard therefore deemed it best, before enforcing the rate made on their own authority, again to submit their proceedings to some eminent civilian, and they consulted Dr. Nicholl on the subject.

Dr. Nicholl advised that the Churchwardens should not enforce the rate then made by them, but should proceed in a more formal manner in the matter. Dr. Nicholl in his opinion told them, that the judgment of Sir Nicholas C. Tindal in the Braintree case, placed the duty of the parishioners to find funds for repairing the church on the strongest possible grounds, *viz.* an obligation by the common law of the land, which they could not throw off; and that it gave a strong intimation that the majority having refused, the minority and the Churchwardens might, *at the same vestry*, make a rate. Dr. Nicholl also stated his opinion to be, that whenever the experiment should be tried to enforce a Church-rate, laid and

made by Churchwardens and a minority of parishioners in vestry assembled, the result would be favourable. It being uncertain whether further proceedings would be taken by the Braintree Churchwardens, Messrs. Popplewell and Pollard felt it incumbent upon them to use every lawful means to provide for the proper and necessary repair of the church, and the decent celebration of the services therein; and influenced by and acting upon the encouraging opinion of Dr. Nicholl, and the suggestion of the two Archdeacons of Craven and Surrey, they proceeded formally and carefully to make a rate in accordance with the instructions which Dr. Nicholl had very carefully given them in his opinion, which instructions it is unnecessary here to quote; and a decree at the instance of a parishioner, having been issued against them from the Ecclesiastical Court at York, requiring the Churchwardens and parishioners on a day therein named, to meet and make a rate, they in obedience to such decree convened a meeting for the 14th of May, 1841. All necessary proceedings having been previously arranged with strict legal technicality, Mr. Popplewell at the meeting proposed that a rate of 383*l.* 4*s.* 2*d.* should be made for certain necessary repairs in the church and churchyard wall, and for the expences of celebrating Divine Service for the ensuing year, including an item for rebuilding the churchyard wall (as per estimate), of 118*l.* 3*s.* 6*d.*, and another item for repairing the north side of the church (which was absolutely necessary) (as per estimate), of 123*l.* 8*s.* 4*d.*, and he moved a rate of one halfpenny in the pound for the purpose of raising this sum.

One Mr. Winterbottom, an active dissenting teacher, then moved, "That there be no Church-rate for the parish of Bradford for the current year," which motion was carried by a large majority, on which Messrs. Popplewell and Pollard, and several of the parishioners, in accordance with the opinion expressed by Dr. Nicholl and by Lord Chief Justice Tindal in the Braintree case, proceeded at the same meeting to make a rate of one halfpenny in the pound.

This rate being then made, it became necessary to enforce it ; and in so doing, the first difficulty experienced by Messrs. Popplewell and Pollard arose in the townships of the parish of Bradford (exclusive of the township of Bradford), of which, as has been before stated, there are thirteen.

It has immemorially been the custom for all the several townships throughout the parish to elect their own Churchwardens, and to contribute in certain well-ascertained proportions to the rate made in the township of Bradford, for the repairs, &c., of the parish church. The Churchwardens of the out-townships, however, refused to pay their proportion of the rate laid by Messrs. Popplewell and Pollard, with a minority of parishioners in vestry assembled, as before stated. Messrs. Popplewell and Pollard, therefore, under the advice of eminent counsel (including the late Sir William Follett), adopted proceedings, by mandamus, in the Court of Queen's Bench, against the Churchwardens of the out-townships, which had the effect in most instances of compelling payment of the rate, but which, from the novelty of the points involved in them, and the unsettled state of the law on the subject, caused very considerable expence to the Churchwardens. It next became necessary to enforce the payment of the proportion of the rate which was payable by the inhabitants of the township of Bradford, some of whom had intimated their intention to offer the most determined resistance thereto. It ought here to be stated that, as the amount of rate payable by each individual of the township of Bradford liable to the payment of a Church-rate was very trifling, and in every case much under £10, the only remedy in the first instance which the Churchwardens had to recover it was by summoning the parties before the magistrates, in accordance with the provisions of the statute 53 Geo. III., c. 127, s. 7. Several inhabitants who refused to pay were accordingly summoned before the magistrates for the non-payment of the rate ; but it will only be requisite in this statement to mention the case of a Mr. John Dale, who was made the instrument of the dissenting party in Bradford to resist

payment. On his being summoned before the magistrates, his solicitor delivered to the magistrates the following notice or objection to the rate :—" I, the undersigned, give you and each of you notice: First, that I protest against the Church-rate alleged to have been laid for the parish of Bradford, in the said riding, as being an attempt to impose an unscriptural and oppressive tax upon all denominations of Christians, for the benefit of one denomination only; Secondly, that I shall *not* contest the validity of the said rate in the Ecclesiastical Courts; and, Thirdly, that I shall commence actions in the courts of common law, against you and all other persons concerned therein, for all acts and proceedings connected with the said rate, which I shall be advised are illegal." The magistrates did not consider that this notice was such a notice of disputing the rate as deprived them of jurisdiction in the matter, and in their opinion the counsel engaged by the Churchwardens concurred.

It may be well at this point to consider the effect of this notice. The only stated ground of objection to the rate is its being unscriptural and oppressive; the second and third portions of the notice being only an intimation of the manner in which Mr. Dale intended to proceed. The objection was clearly insufficient; but if it were really intended to dispute the validity of the rate itself, the Ecclesiastical Court was the proper place wherein to dispute it; but the notice expressly stated that it was *not* Mr. Dale's intention to proceed in that court. The notice, in fact, only stated that it was Mr. Dale's intention to bring actions at law for all acts and proceedings connected with the rate which he *should* be advised were illegal; thereby, in fact, not disputing the rate itself, or its validity, on any substantial grounds, but merely threatening future proceedings for any illegal acts connected with the rate. It cannot, therefore, be doubted but that the magistrates acted rightly in treating the notice as waste paper; and they accordingly issued a warrant against Dale to enforce payment of the

rate. A distress was, about the 2nd of September, 1841, levied on Mr. Dale's effects in pursuance of the warrant, and an action of replevin was immediately afterwards commenced by Mr. Dale against Messrs. Popplewell and Pollard, and the parties who levied the rate in respect of such distress.

The action brought by Mr. Dale was taken to York for trial, and was there directed to be turned into a special case, in order that the decision of the whole bench of judges, and not of one single judge, should be had thereupon. The Braintree Churchwardens were at the same time prosecuting renewed proceedings in the Ecclesiastical Courts on the subject, and as their previous proceedings enabled them to act with greater dispatch than the Bradford Wardens could do, the Braintree case came on for argument in the Court of Queen's Bench, by writ of prohibition from the Ecclesiastical Court, in the early part of 1847, a few months earlier than the case of "*Dale v. Pollard*." The judgment of the Court of Queen's Bench in the Braintree case, established the principle for which Messrs. Popplewell and Pollard were contending, *viz.* that a rate laid by Churchwardens, with a minority of parishioners in vestry assembled, was a valid rate, and for all beneficial purposes the question was determined, but it became necessary for the Court of Queen's Bench to dispose of the case of "*Dale v. Pollard*" on the point of costs.

The case came on therefore for argument in the Easter term, 1847, and was summarily disposed of by the court, holding that the notice given by Mr. Dale to the magistrates, and hereinbefore set forth, deprived the magistrates of jurisdiction in the matter, and therefore that the distress levied upon the effects of Dale was illegal. Of this decision, which had the effect of throwing the main burden of the costs of the proceedings on Messrs. Popplewell and Pollard, although on the great question, *viz.* the validity of the rate laid by the Churchwardens with a minority of parishioners, they were successful, it can only be said here, that it caused great surprise not only

to the counsel of Messrs. Popplewell and Pollard, but also, it is believed, to many other members of the bar.

The decision will not however be without its use, for as the Braintree case decided the principal question, the case of Dale *v.* Pollard (if it shall be considered an authority) will be of great assistance in determining the question of the magistrates' jurisdiction, and will serve as a guide to Churchwardens in future proceedings to enforce the payment of Church-rates. The mode of obtaining and compelling payment of Church-rates is now therefore clearly defined, and Messrs. Popplewell and Pollard have lately, on being requested so to do, given to Churchwardens of other parishes all requisite information for their guidance in making a rate and enforcing its payment.

Messrs. Popplewell and Pollard, in carrying out their object as hereinbefore detailed, have in the proceedings by mandamus against the Churchwardens of the out-townships, and in their necessary defence of the action at the suit of Mr. Dale, incurred very considerable expence. The whole of their outlay in the contest amounts to the large sum of 1889*l.* 12*s.* 8*d.*

In concluding this statement it is right to observe, that the Churchwardens did not attempt to lay and enforce a rate, until the circumstances of the parish rendered it absolutely necessary to do so. Messrs. Popplewell and Pratt, and Messrs. Popplewell and Pollard, during their respective terms of office, had expended from their own moneys more than £1000, in providing for the decent celebration of Divine Service, and the necessary expences and repairs of the parish church; and, in addition to this, had provided, under peculiar circumstances, one-half of the stipend of a clergyman during the years 1838 and 1839, a considerable part of which, however, has been repaid by the subscriptions of some of the parishioners. The parish church and the churchyard wall being, as before stated, in a most dilapidated condition, and endangering the lives of persons inhabiting tenements lying immediately below it, and seeing no method of providing for their repair and the other

necessary expences of the church but by the legal one of a rate, Messrs. Popplewell and Pollard, under these circumstances, were compelled to lay a rate, and to use every lawful means to enforce it. Had the refractory parishioners been sincere in their desire to ascertain truly the legality or illegality of the rate, they would have contested its validity in the Ecclesiastical Court; in which case the decision of the Court of Queen's Bench given in the early part of the year 1847, establishing the validity of a rate laid by the Churchwardens and a minority of the parishioners, would have been given upon the Bradford, and not upon the Braintree case.

It is therefore conceived that Messrs. Popplewell and Pollard deserve equally with the Braintree Churchwardens whatever merit may attach to their individual determination to maintain the rights of the Church, and to enforce, if possible, the legal and moral obligation on parishioners to support the fabric of the parish church, and provide for the decent performance of Divine Service therein.

A LETTER FROM THE LORD BISHOP OF RIPON, ADDRESSED
TO THE REV. DR. BURNET, VICAR OF BRADFORD, YORK-
SHIRE.

Palace, Ripon, Sept. 27, 1848.

My Dear Sir,—

I have read the statement of the late Churchwardens of Bradford with much interest; and they certainly have exerted themselves in behalf of the Church in such a way as to deserve much commendation and support. Although the Braintree case has acquired a greater degree of notoriety than that of Bradford, it is clear that their exertions have helped to advance the cause of the Church in regard to Church-rates, and to place it in its present more favourable position.

Believe me, my dear Sir,

Very faithfully yours,

Rev. Dr. Burnet.

C. T. RIPON.

A LETTER FROM THE VENERABLE THE ARCHDEACON OF
RAVEN TO THE SAME.

Halifax, Oct. 9, 1848.

My Dear Sir,—

I have read with deep interest the statement of Messrs. Popplewell and Pollard in reference to the Bradford Church-rate, and can vouch for it as a faithful report of their case. The circumstances were under my frequent observation at the time, and I could not but admire "the meekness of wisdom," the high principle, and patient resolution with which they submitted to one disappointment after another in the steady maintenance of their duty as Churchwardens.

They have deserved well of all right-hearted Churchmen, and their cause is the cause of the Church.

Believe me, my dear Sir,

Very faithfully yours,

CHARLES MUSGRAVE.

The Rev. Dr. Burnet.

A LETTER FROM THE REV. W. SCORESBY, D.D., LATE VICAR
OF BRADFORD, TO B. B. POPPLEWELL, ESQ.

Whitby, Nov. 8. 1848.

My Dear Sir,—

I can with great satisfaction attest the accuracy—I may say, *unostentatious accuracy*—of the statement of yourself and Mr. George Pollard, in respect of your proceedings, as Churchwardens, in your most persevering and difficult efforts to maintain the rights of the Church, as to Church-rates, during the early part of my Incumbency of the Vicarage of Bradford. As to the value of these efforts to the Church, and as to the importance of them for the guidance of others, you have such testimonies from higher quarters as render any opinion of mine unnecessary. But to points not touched upon by your very modest statement, and not generally known to the public, I feel it at once a duty and a satisfaction to give my special testimony.

There would be some embarrassment in my attempting to describe the condition, as to want of order and propriety in many things, of the parish church of Bradford, when you first entered upon your arduous duties therein; but the efforts you made for the correction of whatever was unfitting, and your success in endeavours that due reverence should be given to the sanctuary, and every thing, within your province, "done decently and in order," were such as to have repeatedly called forth my admiration, and enabled me personally, to feel the value of your services, in this department, to the Church—services, which, if they were well continued after your retirement, which I have much pleasure in stating they were, were rendered both simpler and easier to your successors in office.

I may further add, that, whilst in the unhappy collisions which necessarily

resulted from the discharge of your difficult and onerous duties, much odium and disrepect fell upon the Incumbent, who looked to you for the means of carrying on the services of the Church, and the due and proper administration of the holy Sacraments,—the respect and consideration ever shown him by you, were as deeply impressive upon his feelings, as they were honourable to yourselves.

I remain, my dear Sir,

Yours very faithfully,

WILLIAM SCÖRESBY,

B. B. Popplewell, Esq.

Late Vicar of Bradford.

**A LETTER FROM THE REV. JOHN BURNET, LL.D., TO MESSRS.
POPPLEWELL AND POLLARD.**

Bradford, January 2, 1849.

My dear Sirs,—

I have read attentively and with much painful interest the statement which you have been so good as to submit to me relative to the contested Church-rate in this parish.

You seem to me to have discharged your duty with a degree of single-mindedness and moral courage deserving of all praise; I heartily approve of your conduct, and had I been the Vicar of this parish at the time of your struggles, I should have felt myself bound in duty to co-operate with you.

You and the Braintree Churchwardens have done all that was necessary to make the law speak unequivocally; and if we now refrain from endeavouring to carry out the law, it arises from no difference between our principles and yours, but from the continued exhibition of the same hostility to the law of the land, which you had to encounter.

The more I reflect on your great sacrifices of time, of money, and of mental repose, the more I feel the debt we owe you, in your struggle to uphold the law; and yet when I contemplate the position in which you have been left, I cannot think of advising other Wardens to make similar sacrifices.

As one of those who have requested of you to make "the Bradford Church-rate case" known to the public, I take the liberty of calling the attention of all good and consistent Churchmen to your simple and unadorned narrative, and I sincerely trust, that an appeal which touches on the interests of the Church at large, will meet with a prompt and generous response.

I am, my dear Sirs,

Your faithful servant,

JOHN BURNET.

B. B. Popplewell and George Pollard, Esquires.

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